No. 14-378

IN THE

Supreme Court of the United States

STEPHEN DOMINICK MCFADDEN,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

JOINT APPENDIX

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Petition for a Writ of Certiorari filed Oct. 2, 2014
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APPENDIX A

COURT OF APPEALS
RELEVANT DOCKET ENTRIES

General Docket

United States Court of Appeals for the Fourth Circuit

Court of Appeals
Docket #: 13-4349

Docketed: 05/13/2013
Termed: 05/21/2014

US v. Stephen McFadden

Appeal From: United States District Court for the Western District of Virginia at Charlottesville

Fee Status: fee paid

Originating Court Information:

District: 0423-3 : 3:12-cr-00009-GEC-1

Court Reporter: Brenda Dameron, Court Reporter Coordinator

Court Reporter: Sonia Ferris, Official Court Reporter

Presiding Judge: Glen E. Conrad, Chief U. S. District Court Judge

Date Filed: 02/08/2012

Date Order/Judgment: 04/30/2013

Date Order/Judgment EOD: 04/30/2013
Date NOA Filed: 05/10/2013
Date Rec'd COA: 05/13/2013

Prior Cases: None
Current Cases: None

UNITED STATES OF AMERICA Plaintiff - Appellee	Timothy J. Heaphy Direct: 540-857-2250 [On Brief] OFFICE OF THE UNITED STATES ATTORNEY Western District of Virginia P. O. Box 1709 Roanoke, VA 24008-1709 Ronald Mitchell Huber, Assistant U. S. Attorney Direct: 434-293-4283 Email: Ron.Huber@usdoj.gov [COR NTC Government] OFFICE OF THE UNITED STATES ATTORNEY Suite 104 255 West Main Street Charlottesville, VA 22902-0000 Jean Barrett Hudson, Esq., Assistant U. S. Attorney

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v.

STEPHEN DOMINICK MCFADDEN,
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Defendant-Appellant

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UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

STEPHEN DOMINICK MCFADDEN, a/k/a Stephen Domin McFadden

Defendant - Appellant

05/13/2013	1	Criminal case docketed. Originating case number: 3:12-cr-00009-GEC-1. Date notice of appeal filed: 05/10/2013. Case manager: CTyree. [13-4349] (CT)
05/14/2013	4	DISTRICT COURT UPDATE. ORDER granting [178] Motion for Stay of execution of sentence as to Stephen Dominick McFadden (1) pending his appeal. Signed by District Judge Glen E. Conrad on 5/14/9.[13-4349] (JB)
07/30/2013	18	BRIEF by Appellant Stephen Dominick McFadden in electronic and paper format. Type of Brief: Opening. Method of Filing Paper Copies: hand delivery. Date Paper Copies Mailed, Dispatched, or Delivered to Court: 07/30/2013. [999162585] [13-4349] J. Snook
07/30/2013	19	FULL ELECTRONIC APPENDIX and full paper appendix by

		Appellant Stephen Dominick McFadden. Method of Filing Paper Copies: hand delivery. Date paper copies mailed dispatched or delivered to court: 07/30/2013. Has district court 90-day restriction expired for all transcripts included in appendix? No. The electronic appendix is initially restricted to case participants only. Case participants must be logged into CM/ECF to view the appendix prior to public release. Appendices in Immigration and Social Security cases will remain restricted.[999162628] [13-4349] J. Snook
07/30/2013	20	SEALED APPENDIX VOLUME(S) by Appellant Stephen Dominick McFadden in electronic and paper format. Method of Filing Paper Copies: hand delivery. Date Copies Mailed, Dispatched, or Delivered to court: 07/30/2013.. Filed Ex parte: N. [13-4349] J. Snook
07/30/2013	26	OPENING BRIEF (PAPER) file-stamped, on behalf of Stephen Dominick McFadden. Number of pages: [65]. Sufficient: YES. Entered on Docket Date: 08/12/2013. [999170457] [13-4349] (CT)

10/08/2013	34	Corrected BRIEF by Appellee US in electronic and paper format. Type of Brief: Response. Method of Filing Paper Copies: mail. Date Paper Copies Mailed, Dispatched, or Delivered to Court: 10/09/2013. [999213976] [13-4349] Ronald Huber
10/08/2013	35	RESPONSE BRIEF (PAPER) file-stamped, on behalf of US. Number of pages: [75]. Sufficient: YES. Entered on Docket Date: 10/15/2013. [999218232] [13-4349] (CT)
03/19/2014	42	ORAL ARGUMENT heard before the Honorable William B. Traxler, Jr., J. Harvie Wilkinson, III and Barbara Milano Keenan. Attorneys arguing case: Mr. J. Lloyd Snook, III for Appellant Stephen Dominick McFadden and Ms. Jean Barrett Hudson, Esq. for Appellee US. Courtroom Deputy: Cathy Eagles. [999318795] [13-4349] (CWE)
05/21/2014	43	PUBLISHED AUTHORED OPINION filed. Originating case number: 3:12-cr-00009-GEC-1. [999360180].Annotation added to opinion reflecting Supreme Court History. [13-4349]--[Edited 02/02/2015 by SJC] (CT)
05/21/2014	44	JUDGMENT ORDER filed.

		Disposition method: 13-4349 opn.p.arg. Decision: Affirmed. Originating case number: 3:12-cr-00009-GEC-1. Entered on Docket Date: 05/21/2014. [999360184] Copies to all parties and the district court/agency.. [13-4349] (CT)
06/04/2014	46	PETITION for rehearing en banc (FRAP 35) by Appellant Stephen Dominick McFadden. [13-4349] J. Snook
06/04/2014	47	Mandate stayed by FRAP 41(d)(1).. [13-4349] (CT)
06/17/2014	48	COURT ORDER filed [999377588] denying Motion for rehearing en banc [46] Copies to all parties.. [13-4349] (CT)
06/20/2014	50	MOTION by Appellant Stephen Dominick McFadden to stay mandate [FRAP 41(d)]. Date and method of service: 06/20/2014 ecf. [999380481] [13-4349] J. Snook
06/20/2014	51	Mandate stayed by FRAP 41(d)(1).. [13-4349] (CT)
07/07/2014	52	COURT ORDER filed [999389864] denying Motion to stay mandate [FRAP 41(d)] [50] Copies to all parties. [13-4349] (CT)
07/15/2014	53	Mandate issued. Referencing: [44] Judgment Order , [43] Published

		Authored Opinion. Originating case number: 3:12-cr-00009-GEC-1.. [13-4349] (CT)

APPENDIX B

DISTRICT COURT
RELEVANT DOCKET ENTRIES

U.S. District Court
Western District of Virginia (Charlottesville)
CRIMINAL DOCKET FOR CASE #:
3:12-cr-00009-GEC-1

Case title: USA v. McFadden et al

Date Filed: 02/08/2012

Date Terminated: 04/30/2013

Assigned to: District Judge Glen E. Conrad

Defendant (1)

Stephen Dominick McFadden *TERMINATED: 04/30/2013* *also known as* Stephen Domin McFadden *TERMINATED: 04/30/2013*	repre-sented by	John Lloyd Snook , III Snook & Haughey, P.C. P.O. Box 2486 Charlottesville, VA 22902 434-293-8185 Fax: 434-295-0698 Email: jlsnook@snookandhaughey.com *ATTORNEY TO BE NOTICED* *Designation: Retained*

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Pending Counts	Disposition
21:846=CD.F - CONSPIRACY TO DISTRIBUTE CONTROLLED SUBSTANCE-MDMC, MDPV and 4-MEC, Controlled substance analogues (2/15/12) (1s)	CBOP 33 mos as to each of Cts 1, 2, 3, 4, 5, 6, 7, 8, & 9, to run concurrently. SR 30 mos. as to each of Cts 1, 2, 3, 4, 5, 6, 7, 8, & 9, to run concurrently. FINE $1000 total, SA $900 total.
21:841A=CD.F; 21:841(a)(1) and (b)(1)(C)-	CBOP 33 mos as to each of Cts 1, 2, 3, 4, 5, 6, 7, 8, & 9, to run concurrently.

CONTROLLED SUBSTANCE - SELL, DISTRIBUTE, OR DISPENSE-MDPV and MDMC; Controlled substance analogues-(Ct 2; 7/25/11)(Ct 3; 8/11/11) (2s-3s)	SR 30 mos. as to each of Cts 1, 2, 3, 4, 5, 6, 7, 8, & 9, to run concurrently. FINE $1000 total, SA $900 total.
21:841A=CD.F; 21:841(a)(1) and (b)(1)(C)-CONTROLLED SUBSTANCE - SELL, DISTRIBUTE, OR DISPENSE-MDPV,MDMC and 4-MEC; Controlled substance analogues-(Ct 4; 8/24/11)(Ct 5; 8/26/11)(Ct 6; 9/16/11) (4s-6s)	CBOP 33 mos as to each of Cts 1, 2, 3, 4, 5, 6, 7, 8, & 9, to run concurrently. SR 30 mos. as to each of Cts 1, 2, 3, 4, 5, 6, 7, 8, & 9, to run concurrently. FINE $1000 total, SA $900 total.
21:841A=CD.F; 21:841(a)(1) and	CBOP 33 mos as to each of Cts 1, 2, 3, 4, 5, 6, 7, 8,

(b)(1)(C)-CONTROLLED SUBSTANCE - SELL, DISTRIBUTE, OR DISPENSE-4-MEC; Controlled substance analogue-(Ct 7; 10/27/11)(Ct 8; 1/6/12)(Ct 9; 2/2/12) (7s-9s)	& 9, to run concurrently. SR 30 mos. as to each of Cts 1, 2, 3, 4, 5, 6, 7, 8, & 9, to run concurrently. FINE $1000 total, SA $900 total.

Highest Offense Level (Opening)

Felony

Terminated Counts	Disposition
21:846=CD.F; 21:846-CONSPIRACY TO DISTRIBUTE CONTROLLED SUBSTANCE-MDMC, MDPV and 4-MEC, Controlled Substance	Supersesding Indictment filed

analogues(2/8/12) (1)	
21:841A=CD.F; 21:841(a)(1) and (b)(1)(C)- CONTROLLED SUBSTANCE - SELL, DISTRIBUTE, OR DISPENSE- MDPV and MDMC (7/25/11) (5)	Supersesding Indictment filed
21:841A=CD.F; 21:841(a)(1) and (b)(1)(C)- CONTROLLED SUBSTANCE - SELL, DISTRIBUTE, OR DISPENSE- MDPV and MDMC (8/11/11) (7)	Supersesding Indictment filed
21:841A=CD.F; 21:841(a)(1) and (b)(1)(C)- CONTROLLED SUBSTANCE - SELL, DISTRIBUTE,	Supersesding Indictment filed

OR DISPENSE-MDPV and MDMC (8/24/11) (8)	
21:841A=CD.F; 21:841(a)(1) and (b)(1)(C)-CONTROLLED SUBSTANCE - SELL, DISTRIBUTE, OR DISPENSE-MDMC (8/26/11) (9)	**Supersesding Indictment filed**
21:841A=CD.F; 21:841(a)(1) and (b)(1)(C)-CONTROLLED SUBSTANCE - SELL, DISTRIBUTE, OR DISPENSE-4-MEC (10/27/11) (10)	**Supersesding Indictment filed**

Highest Offense Level (Terminated)

Felony

Complaints	Disposition
None	

Plaintiff

USA	represented by	Joseph D. Platania United States Attorneys Office Room 104 255 West Main Street Charlottesville, VA 22902 434-293-4283 Fax: 434-293-4910 Email: platania@charlottesville.org *ATTORNEY TO BE NOTICED*
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Dated Filed	#	Docket Text
02/08/2012	3	SEALED INDICTMENT as to Stephen Domin McFadden (1) count(s) 1, 5, 7, 8, 9, 10, Lois Lee McDaniel (2) count(s) 1, 2, 3, 5, 6, 7, 8, John Walter Collier (3) count(s) 1, 4, 5, 6, Dustin Wayne Orange (4) count(s) 1, 4. (hnw)
11/14/2012	121	SUPERSEDING INDICTMENT as to Stephen Dominick McFadden(1) count(s) 1s, 2s-3s, 4s-6s, 7s-9s. (hnw)
11/27/2012	126	NOTICE OF INTENT TO CALL EXPERT WITNESS (Attachments: # 1 Exhibit Resume of Dr. DiBerardino, # 2 Declaration of Dr. DiBerardino)(Huber, Ronald)
11/27/2012	127	NOTICE OF INTENT TO CALL EXPERT WITNESS (Attachments: # 1 Exhibit Dr. Prioleau Resume, # 2 Exhibit Dr. Prioleau Declaration)(Huber, Ronald)
12/19/2012	130	NOTICE of Intention to Call Expert Witness (Attachments: # 1 Exhibit Attachment 1 Resume of Nicole Edwards, # 2 Exhibit Attachment 2 Resume of Richard C.A. Isaacs, # 3 Exhibit Attachment 3 Resume of Jonathan Liu, # 4 Exhibit Attachment 4

		Resume of Julia L. Rummel,# 5 Exhibit Summary Testimony in Detailed Lab Reports)(Huber, Ronald)
12/21/2012	131	NOTICE Notice of Intent to Call Expert Witness (Supplement to Previous Notice) re 130 Notice (Other), Notice (Other) (Attachments: # 1 Exhibit Additional Lab Certificates) (Huber, Ronald)
12/21/2012	132	MOTION in Limine by Stephen Dominick McFadden. (Attachments: # 1 Exhibit A – DeBerardino Declaration, # 2 Exhibit B Prioleau Declaration, # 3Exhibit C McDaniel Phone Calls)(Snook, John)
12/26/2012	134	MOTION to Dismiss by Stephen Dominick McFadden. (Attachments: # 1 Exhibit Exhibits A through C)(Snook, John)
12/28/2012	135	RESPONSE to Motion by USA as to Stephen Dominick McFadden re 132 MOTION in Limine (Huber, Ronald)
01/03/2013	136	RESPONSE to Motion by USA as to Stephen Dominick McFadden re 134 MOTION to Dismiss (Attachments: # 1 Exhibit Declarations of DiBerardino, # 2Exhibit Declarations of

		Prioleau)(Huber, Ronald)
01/04/2013	137	ORDER denying 132 Motion in Limine as to Stephen Dominick McFadden (1); denying 134 Motion to Dismiss as to Stephen Dom inick McFadden (1). Signed by District Judge Glen E. Conrad on 1/4/2013. (ssm)
01/04/2013	138	Proposed Jury Instructions by USA as to Stephen Dominick McFadden (Huber, Ronald)
01/07/2013	141	Minute Entry for proceedings held before District Judge Glen E. Conrad:Jury Trial Day 1 as to Stephen Dominick McFadden held on 1/7/2013 Stephen Dominick McFadden (1) on Count 1s,2s-3s,4s-6s,7s-9s (Original entry deleted to correctly reflect only superseding counts to trial) To resume for Day 2 @ 830 am 1/8/2013 (Court Reporter Sonia Ferris) (ssm) (Entered: 01/08/2013)
01/08/2013	139	Proposed Jury Instructions by Stephen Dominick McFadden (Snook, John)
01/08/2013	142	Proposed Jury Instructions by USA as to Stephen Dominick McFadden (Huber, Ronald)
01/08/2013	144	Minute Entry for proceedings held

		before District Judge Glen E. Conrad:Jury Trial Day 2 as to Stephen Dominick McFadden held on 1/8 /2013. Gov't continues with evidence. Counsel to report 1/9/2013 @ 830, Jury by 845am. Deft to remain on bond (Court Reporter Sonia Ferris) (ssm) (Entered: 01/09/2013)
01/09/2013	143	MOTION in Limine by Stephen Dominick McFadden. (Snook, John)
01/09/2013	145	Minute Entry for proceedings held before District Judge Glen E. Conrad:Jury Trial Day 3 as to Stephen Dominick McFadden held on 1/9/2013. Govt and Deft rests Evidence open pending am consultation. Deft to remain on bond, Parties due 830, Jury @ 9 am. (Court Reporter Sonia Ferris) (ssm) (Entered: 01/10/2013)
01/10/2013	150	Minute Entry for proceedings held before District Judge Glen E. Conrad:Jury Trial Day 4 as to Stephen Dominick McFadden concluded on 1/10/2013 with guilty verdict all counts as to deft. Deft to remain on bond pending motions and sentencing

		04/29/2013 @ 10 am (Court Reporter Sonia Ferris) (ssm) (Entered: 01/14/2013)
01/10/2013	151	EXHIBIT LIST RE: January 7-10, 2013 Jury Trial in USA v. Stephen Dominick McFadden 3-12-cr-9-01. Exhibits not included here either returned to DEA Case agent at conclusion of case or Counsel for Deft due to bulky nature or b/c consisting of drug evidence. See last page of exhibit list for referenced exhibits. (Attachments: # 1 G1, # 2 G2, # 3 G3, G5,# 4 G3A, # 5 G5A, # 6 G8, G9, # 7 G10, # 8 G22-45 WITH GAPS, # 9 G46-64 WITH GAPS, # 10 G66-G86 WITH GAPS, # 11 G87-92, # 12 G96-104 WITH GAPS, # 13 D3,D5,D6)(ssm) Modified on 1/14/2013 to correct date to 1/10/2013 (ssm). (Entered: 01/14/2013)
01/10/2013	152	Jury Instructions as to Stephen Dominick McFadden (ssm) (Entered: 01/14/2013)
01/10/2013	153	JURY VERDICT as to Stephen Dominick McFadden (1) Guilty on Count 1s,2s-3s,4s-6s,7s-9s. (ssm) (Entered: 01/14/2013)
01/25/2013	156	MOTION for Acquittal by Stephen Dominick McFadden. (Attachments: # 1 Exhibit)(Snook,

		John)
04/19/2013	167	RESPONSE to Motion by USA as to Stephen Dominick McFadden re 156 MOTION for Acquittal (Huber, Ronald)
04/29/2013	168	PRESENTENCE INVESTIGATION REPORT (Sealed) as to Stephen Dominick McFadden (ch)
04/29/2013	169	Minute Entry for proceedings held before District Judge Glen E. Conrad:Sentencing held on 4/29/2013 for Stephen Dominick McFadden (1), Count(s) 1s, 2s-3s, 4s-6s, 7s-9s, CBOP 33 mos as to each of Cts 1-9, to run concurrently. SR 30 mos. as to each of Cts 1-9, to run concurrently. FINE $1000 total, SA $900 total. Deft to self report (Court Reporter Sonia Ferris) (ssm) (Entered: 04/30/2013)
04/29/2013	174	EXHIBIT LIST re Stephen Dominick McFadden (Attachments: # 1 Govt Ex 1, # 2 Deft Ex 1)(ssm) (Entered: 05/01/2013)
04/30/2013	171	ORDER DIRECTING FORFEITURE OF PROPERTY as to Stephen Dominick McFadden.. Signed by District Judge Glen E. Conrad on 4/30/2013. (ssm)
04/30/2013	172	JUDGMENT as to Stephen

		Dominick McFadden (1), Count(s) 1, 10, 5, 7, 8, 9, Supersesding Indictment filed; Count(s) 1s, 2s-3s, 4s-6s, 7s-9s, CBOP 33 mos as to each of Cts 1, 2, 3, 4, 5, 6, 7, 8, & 9, to run concurrently. SR 30 mos. as to each of Cts 1, 2, 3, 4, 5, 6, 7, 8, & 9, to run concurrently. FINE $1000 total, SA $900 total.. Signed by District Judge Glen E. Conrad on 4/30/2013. (Attachments: # 1 Forfeiture Order) (ssm)
05/10/2013	175	MEMORANDUM OPINION as to Stephen Dominick McFadden. Signed by District Judge Glen E. Conrad on 5/10/13. (hnw)
05/10/2013	176	ORDER as to Stephen Dominick McFadden Denying 156 MOTION for Acquittal filed by Stephen Dominick McFadden. Signed by District Judge Glen E. Conrad on 5/10/12. (hnw)
05/10/2013	177	NOTICE OF APPEAL Final Judgment to 4CCA by Stephen Dominick McFadden Filing fee $ 455, receipt number 0423-177705 0. (Snook, John)
05/10/2013	178	MOTION to Stay Sentence under Rule 38(b). (Snook, John)
05/14/2013	181	ORDER granting 178 Motion for Stay of execution of sentence as to Stephen Dominick McFadden (1)

		pending his appeal. Signed by District Judge Glen E. Conrad on 5/14/13. (hnw) Modified on 5/15/2013 to corret year in date of signature (hnw).
06/12/2013	185	USCA Appeal Transcript Order Acknowledgment re 177 Notice of Appeal Final Judgment to 4CCA Court Reporter: Sonia Ferris. Appeal Transcript due by 7/19/2012. (hnw)
07/09/2013	194	MOTION for Forfeiture of Property by USA as to Stephen Dominick McFadden. (Attachments: # 1 Exhibit A: Declaration of Publication, # 2 Text of Proposed Order : Final Order of Forfeiture)(Huber, Ronald)
07/09/2013	195	FINAL ORDER OF FORFEITURE as to Stephen Dominick McFadden.. Signed by District Judge Glen E. Conrad on 07/09/13. (ssm)

APPENDIX C

EXCERPTS OF GOVERNMENT'S PROPOSED JURY CHARGE

Elements-Count One

In order to sustain its burden of proof for the crime of distribution of a controlled substance analogue as charged in Count 1 of the Indictment, the Government must prove the following essential elements:

One: That beginning in or around June 2011, and continuing thereafter until February 15, 2012, in the Western Judicial District of Virginia, two or more persons in some way or manner, made an agreement or understanding to accomplish a common plan;

Two: That the defendant knew the purpose of the agreement, and joined it willingly, that is, with the intent to further the purpose of the plan;

Three: That the purpose of the agreement was to distribute or to possess with intent to distribute, for human consumption, a mixture or substance containing

MDPV. MDMC/Methylone, and 4-MEC; and

Four: That MDPV, MDMC/Methylone, and 4-MEC were controlled substance analogues.

For you to find the defendant guilty of this crime the Government must prove all of these essential elements beyond a reasonable doubt; otherwise you must find the defendant not guilty.

Regarding the fourth essential element, to prove that a mixture or substance is a controlled substance analogue, the Government must prove the following beyond a reasonable doubt:

One: That the chemical structure of the mixture or substance is substantially similar to the chemical structure of a controlled substance in Schedule I or II of the Controlled Substances Act; and

Two: That the mixture or substance had an actual stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant, or hallucinogenic effect on the

central nervous system of a controlled substance in Schedule I or II of the Controlled Substances Act; or that the defendant represented or intended that the substance have a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance in Schedule I or II of the Controlled Substances Act.

* * *

Elements-Counts 2, 3, 4, 5, 6, 7, 8 and 9

In order to sustain its burden of proof for the crime of distribution of a controlled substance analogue as charged in Counts 2, 3, 4, 5, 6, 7, 8 and 9 of the Indictment, the Government must prove the following essential elements as to each count:

One: That the defendant knowingly and intentionally distributed a mixture or substance;

Two: That the mixture or substance was a controlled substance analogue; and

Three: That the defendant distributed the controlled substance analogue with the intent that it be consumed by humans.

For you to find the defendant guilty of this crime the Government must prove all of these essential elements beyond a reasonable doubt; otherwise you must find the defendant not guilty.

Regarding the second essential element, to prove that a mixture or substance is a controlled substance analogue, the Government must prove the following beyond a reasonable doubt:

One: That the chemical structure of the mixture or substance is substantially similar to the chemical structure of a controlled substance in Schedule I or II of the Controlled Substances Act; and

Two: That the mixture or substance had an actual stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the

stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance in Schedule I or II of the Controlled Substances Act; or that the defendant represented or intended that the substance have a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance in Schedule I or II of the Controlled Substances Act.

APPENDIX D

EXCERPT OF DEFENDANT'S PROPOSED JURY CHARGE

Definition of "Knowingly"

A person acts knowingly if he realizes what he is doing and is aware of the nature of his conduct, and does not act through ignorance, mistake, or accident. In deciding whether the defendant acted knowingly, you may consider all of the evidence, including what the defendant did or said.

You may find that the defendant knowingly participated in a conspiracy to distribute controlled substance analogues, and that he knowingly distributed controlled substance analogues, if you find beyond a reasonable doubt that he knew that the substances that he was distributing possessed the characteristics of controlled substance analogues – that is, that he knew that:

1. The chemical structure of the substance is substantially similar to the chemical structure of a controlled substance in Schedule I or II of the Controlled Substances Act;

2. The substance has an actual, intended or claimed stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to or

greater than the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance in Schedule I or II of the Controlled Substance Act; and

3. The substance would be consumed by humans.

You may find that the defendant knowingly distributed controlled substance analogues if you find beyond a reasonable doubt that he had a strong suspicion that the substances that he was distributing possessed the characteristics of controlled substance analogues, as defined above, and that he deliberately avoided the truth. You may not find that the defendant acted knowingly if he was merely mistaken or careless in not discovering the truth, or if he failed to make an effort to discover the truth.

Source: Seventh Circuit Pattern Jury Instructions, §4.10, with language from *Staples v. United States*, 511 U.S. 600, 114 S.Ct. 1793, 128 L.Ed.2d 608 (1994); see *Bryan v. United States*, 524 U.S. 184, 193, 118 S. Ct. 1939, 1946, 141 L. Ed. 2d 197 (1998).

APPENDIX E

EXCERPTS OF JURY CHARGE AS GIVEN BY DISTRICT COURT

It is now time for me to instruct you as to the substantive law that will govern your consideration of this case.

The defendant has been charged with conspiring to distribute and possess with intent to distribute, and with distributing, for human consumption, a mixture or substance containing controlled substance analogues, specifically 3,4-Methylenedioxymethcaninone (which is commonly known as "MDMC" or "Methylone"); 3-4-Methylenedioxypyrovalerone (which is commonly known as "MDPV"); and 4-Methyl-ethylcathinone (which is commonly known as "4-MEC").

I will refer to these substances by their abbreviations throughout my instructions.

It is charged in Count One of the indictment that beginning in or around June 2011, and continuing thereafter until February 15, 2012, in the Western District of Virginia and elsewhere, the defendant, Stephen Dominick McFadden, knowingly and intentionally conspired with others to possess with the intent to distribute and to distribute: (1) prior to October 21, 2011, a mixture or substance containing a detectable amount of MDMC, MDPV, or 4-MEC, controlled substance analogues as defined

Section 802(32) of Title 21 of the United States Code, with the intent for human consumption as provided in Section 813 of Title 21, in violation of Section 841 (a)(1) of Title 21; and (2) from October 21, 2011 and continuing until February 15, 2012, a mixture or substance containing a detectable amount of 4-MEC, a controlled substance analogue as defined in Section 802(32) of Title 21, with the intent for human consumption as provided in Section 813 of Title 21, in violation of Section 841(a)(1) of Title 21; and that this was all in violation of Section 846 of Title 21.

Section 846 of Title 21 makes it a separate federal crime or offense for anyone to conspire with someone else to do something which, if actually carried out, would be a violation of Title 21, United States Code, Section 841(a)(1).

Section 841(a)(1) makes it a crime for anyone to knowingly or intentionally distribute, or possess with intent to distribute, a controlled substance.

Section 813 of Title 21 provides that a controlled substance analogue shall, to the extent intended for human consumption, be treated as a Schedule I controlled substance.

A controlled substance analogue, for purposes of these statutes, is a substance: (1), which has an actual, intended, or claimed stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant, or hallucinogenic effect on the

central nervous system of a controlled substance in Schedule I or II of the Controlled Substance Act; and (2) which has a chemical structure that is substantially similar to the chemical structure of a controlled substance in Schedule I or II of the Controlled Substances Act.

A "conspiracy" is an agreement between two or more persons to join together to accomplish some unlawful purpose or to accomplish some lawful purpose by unlawful means. It is a kind of "partnership in crime" in which each member becomes the agent or partner of every other member.

For you to find the defendant guilty of the conspiracy offense described in Count One of the indictment, you must be convinced that the government has proven each of the following elements beyond a reasonable doubt:

FIRST: that beginning in or around June 2011, and continuing until February 15, 2012, two or more persons, directly or indirectly, reached an agreement or understanding to accomplish a common plan;

SECOND That the defendant knew the purpose of the agreement, and joined in it willingly, that is, with the intent to further the purpose of the plan;

THIRD: That the purpose of the plan was to distribute or possess with intent to distribute, for human consumption, a mixture or substance containing MDPV, MDMC/ Methylone, or 4-MEC, which has an actual, intended, or claimed stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to that or greater than the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance in Schedule I or II of the Controlled Substances Act; AND

FOURTH: That the chemical structure of MDPV, MDMC/ Methylone, or 4-MEC is substantially similar to the chemical structure of a controlled substance in Schedule I or II of the Controlled Substances Act.

For you to find the defendant guilty of the conspiracy offense charged in Count One, the government must prove each of these essential elements beyond a reasonable doubt. Otherwise, you must find the defendant not guilty of this offense.

As I stated earlier, a conspiracy is an agreement between two or more persons to join together to accomplish some unlawful purpose.

The government must prove that the defendant and at least one other person knowingly and deliberately arrived at an agreement that they, and perhaps others, would distribute, or possess with intent to distribute, a controlled substance analogue, by means of some common plan or course of action.

In other words, the evidence in this case must show, beyond a reasonable doubt, that the defendant knew the purpose or goal of the agreement, and that he entered into the agreement intending in some way to accomplish the goal or purpose by this common plan or joint action.

The government does not need to prove that the alleged conspirators entered into any formal agreement or that they directly stated between themselves all of the details of the scheme.

By its very nature, a conspiracy is clandestine and covert, thereby frequently resulting in little direct evidence of such an agreement. Hence, a conspiracy is generally proven by circumstantial evidence and the context in which circumstantial evidence is adduced. Indeed, a conspiracy may be proven wholly by circumstantial evidence.

Circumstantial evidence tending to prove a conspiracy may consist of the defendant's relationship with other members of the conspiracy, the length of this association, the defendant's conduct, and the nature of the conspiracy.

Circumstantial evidence sufficient to support a conspiracy need not exclude every reasonable hypothesis of innocence, provided the totality of the evidence is sufficient to prove guilt beyond a reasonable doubt. While circumstantial evidence may sufficiently support a conspiracy conviction, the government must nevertheless establish proof of each element of a conspiracy beyond a reasonable doubt.

I further instruct you that the government is not required to show that all of the members of the alleged conspiracy were named or charged. However, the defendant may not be convicted for conspiring only with a government informant to commit an unlawful act.

The government does not need to prove that all of the people whom the evidence shows were actually members of a conspiracy agreed to all of the means or methods set out in the indictment.

Similarly, the government does not need to prove that the defendant joined the agreement at its beginning, that all of the details of the scheme were actually carried out, or that the alleged conspirators succeeded in accomplishing their unlawful objectives.

Mere presence at the scene of an event, however, even with knowledge that a crime is being committed, or the mere fact that certain persons may have associated with each other and may have assembled together and discussed common aims and interests, does not necessarily establish proof of the

existence of a conspiracy. Additionally, a person who has no knowledge of a conspiracy, but who happens to act in a way which advances some purpose of a conspiracy, does not thereby become a conspirator.

I also tell you that the existence of a mere buyer-seller relationship alone is insufficient to support a conspiracy conviction, even if the buyer intends to resell the purchased drugs to others. However, you may consider the purchase of drugs for resale, along with all the other evidence, in determining whether there was a conspiratorial agreement between the buyer and seller, or other persons, to distribute or possess with intent to distribute, controlled substance analogues.

If, and only if, it appears from the evidence in the case that a conspiracy did exist, and that the defendant was one of the members of the conspiracy, then you may consider the acts and statements by any person likewise found to be a member as evidence in the case as to the defendant. This is true even though the acts and statements may have occurred in the absence of and without the knowledge of the defendant, provided that such acts and statements were knowingly done or knowingly made during the existence of the conspiracy and in furtherance of some intended object or purpose of the conspiracy. Otherwise, any admission or incriminatory statement made, or act done by one person outside of court, may not be considered as evidence against any person who was not present, did

not see the act done, or did not hear the statement made.

I will now instruct you on the offenses charged in Counts Two through Nine of the indictment.

In each of these counts, the defendant is charged with knowingly and intentionally distributing, in the Western District of Virginia, a mixture or substance containing a detectable amount of one or more controlled substance analogues, as defined in Section 802(32) of Title 21, knowing that the substances were intended for human consumption, as provided in Section 813 of Title 21, all in violation of Section 841 (a)(1) of Title 21.

Specifically, Count Two charges that on or between July 11, 2011 and July 25, 2011, the defendant knowingly and intentionally distributed a mixture or substance containing MDPV or MDMC.

Count Three charges that on or between July 29, 2011 and August 11, 2011, the defendant knowingly and intentionally distributed a mixture or substance containing MDPV or MDMC.

Count Four charges that on or between August 10, 2011 and August 24, 2011, the defendant knowingly and intentionally distributed a mixture or substance containing MDPV, MDMC, or 4-MEC.

Count Five charges that on or about August 26, 2011, the defendant knowingly and intentionally

distributed a mixture or substance containing MDPV, MDMC, or 4-MEC.

Count Six charges that on or about September 26, 2011, the defendant knowingly and intentionally distributed a mixture or substance containing MDPV, MDMC, or 4-MEC.

Count Seven charges that on or about October 27, 2011, the defendant knowingly and intentionally distributed a mixture or substance containing 4-MEC.

Count Eight charges that on or about January 6, 2012, the defendant knowingly and intentionally distributed a mixture or substance containing 4-MEC.

Count Nine charges that on or about February 2, 2012, the defendant knowingly and intentionally distributed a mixture or substance containing 4-MEC.

In each of these counts, the indictment alleges that the substances at issue were controlled substance analogues, and that the defendant knew that they were intended for human consumption.

In order to sustain its burden of proof for the crime of distributing a controlled substance analogue as charged in Counts Two through Nine of the indictment, the government must prove the following

essential elements beyond a reasonable doubt as to each Count:

FIRST: That the defendant knowingly and intentionally distributed a mixture or substance that has an actual, intended, or claimed stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance in Schedule I or II of the Controlled Substances Act;

SECOND: That the chemical structure of the mixture or substance is substantially similar to the chemical structure of a controlled substance in Schedule I or II of the Controlled Substances Act;

AND

THIRD: That the defendant intended for the mixture or substance to be consumed by humans.

For you to find the defendant guilty of the offense charged in Counts Two, Three, Four, Five, Six, Seven, Eight, and Nine, the government must prove each of these essential elements beyond a reasonable doubt, as to each count. Otherwise, you

must find the defendant not guilty of the offense charged in that count.

The government is required to prove that one or more of the substances involved in this case was, in fact, a controlled substance analogue of a Schedule I or Schedule II controlled substance.

I tell you that 3,4-methylenedioxmethamphetamine (also known as "MDMA") and methcaninone are Schedule I controlled substances under the Controlled Substance Act.

The term "to distribute," as used in these instructions, means to deliver or to transfer possession or control of something from one person to another. The term includes the sale of something by one person to another.

To do something "knowingly," as used in these instructions, means to do it voluntarily and intentionally, and not by ignorance, accident, or mistake. In deciding whether the defendant acted knowingly, you may consider all of the evidence, including what the defendant did or said.

If I have not defined words or terms used in the instructions, I tell you that you should apply the terms' ordinary, everyday meaning.

The indictment charges that certain events or conduct occurred "on or between" or "on or about" a

specific date. The government does not have to prove the events or conduct occurred on the exact dates alleged. Rather, it is sufficient if they occurred on a date reasonably near the date stated in the indictment.

APPENDIX F

EXCERPTS OF TESTIMONY OF MARK FRAZIER JAN. 7, 2013

[41]

Q. I'm showing you what has been marked for identification as Government's 6 and 7. Can you start with 6 and tell the jurors what's in 6?

A. Yes. Government Exhibit 6 is a DEA evidence bag, again with a clear Ziplock container which belongs to the police department. Inside of that was the light blue jeweler's bag, with a white powder inside. That was one of the bags bought on that day and was recovered by me.

Government Exhibit #7 is the same thing, same type packaging and is a smaller, light blue jeweler's bag with a powdery-type substance in it and again, that was one of the substances bought and recovered into my possession.

* * *

[46]

Q. We're about to go through nine drug exhibits. I think the easiest way, I'll just state what they are and show them to you and you can briefly explain to the jury what they are.

Government's 11, for identification.

A. This is the evidence bag, DEA evidence bag, with an off-white powder substance inside that was

seized from the search of the store. Has another, looks like another bag inside of that as well.

Q. For identification, Government's 12.

A. Exhibit 12 is also, again, it's packaging, [47] evidence packaging, with a Ziplock bag with an off-white powder-like substance inside, also seized from the store.

Q. For identification, Government's 13.

A. 13, again, is the packaging. Inside of that is a Ziplock bag with off-white powder-like substance in that as well, seized from the store.

Q. For identification, Government's 14.

A. 14 is the evidence packaging and this has a Ziplock bag with off-white loose powder in it. It also has, looks like several jeweler's bags and then three plastic containers in it as well. Looks like possible residue or very small amount of powder in that. It was all seized from the store.

Q. Government's, for identification, 15.01 and 15.02 have two different substances I'll ask you to talk about. There's drug Exhibit 25.01 and 25.02. When you hold that up, if you could just tell the jurors, there's two different things in there we're talking about.

So for identification, Government's 15.01 and 15.02.

A. Inside the evidence packaging, there's one clear, Ziplock with white powder in that and that has in blue pen, Exhibit 25.01 on it.

Here is a clear plastic bag with a couple smaller [48] baggies and that has Exhibit 25.02 on it.

There are also some of the plastic vials again. That was all seized from the store.

Q. For identification, Government's 16.

A. Inside the packaging again are Ziplock bags with powder. Some of the blue jeweler's bags again, and then the black and clear plastic vials, with writing on it; Alpha, prices and stuff. Evidence seized from the store on that day.

Q. For identification, Government 17.01 and 17.02. Again, there are a couple different substances in that bag?

A. Inside the packaging was 27.01. It's a white powder. Inside packaging is a clear, plastic container. 27.02 is a separate baggy, again, of a kind of off-white powder and some more packaging.

* * *

[60]

Q. Did something come through the mail that you entered into evidence?

A. That's correct; inside the FedEx package.

Q. Showing you 32 and 33, marked for identification.

A. That's correct. There was two packets of the off-white powder that was sent through the FedEx package.

* * *

[67]

Q. Did something come in the mail?

A. Yes, it did.

Q. 43 and 44, for identification.

A. 43 and 44 are -- is the product that came in the FedEx packaging.

43, you can maybe tell from this side. That's going to be yellowy paste-like substance now in the Ziplock bag.

44 is a Ziplock type bag with a white powder.

* * *

[191]

Q. Is there anything, labelling wise, on what was sent that's consistent with what was in the phone call?

A. Yes. Inside on the package that was recovered from the FedEx package, there's a sticker, green sticker, that has Sheen's Winning Bath Salts written on the sticker. Then it has another -- it does have another sticker on that as well.

APPENDIX G

TESTIMONY OF LOIS MCDANIEL
JAN. 8, 2013

[8]

Q. What were the quantities you were ordering from him?

A. 10 to 30 grams.

Q. How much were you paying per gram?

A. $15 per gram.

Q. How often were you getting the 10 to 30-gram shipments from him?

A. One to two weeks, every one to two weeks.

Q. Were you doing anything with the substance that he sent to you initially?

A. Not initially, no.

Q. A little bit later on, did you start doing something to the substances he was sending you?

A. Yes. We broke it down with B6, which is Vitamin B6. If we had a gram, then we put a gram of B6 in it as well to bring the potency down.

Q. Would that also help you make more money?

A. Yes.

Q. You said you were paying $15 a gram to Mr. McFadden. How much were you selling a gram for? [9]

A. At first, we were selling it for 30. Then we went all the way up to $70.

MR. PLATANIA: Can I have continuing permission to approach?

THE COURT: (Indicating yes)

BY MR. PLATANIA:

Q. I'm showing you what's been marked for identification as Government's 18. Do you recognize that?

A. Yes, I do.

Q. What is that?

A. It's a scale.

Q. You talked about adding B6 to the product being sent to you. Would that scale be used while you were doing that?

A. Yes.

Q. That's how you'd weigh it out to know?

A. Yes.

MR. PLATANIA: Move in Government's 18.

THE COURT: Receive 18, without objection.

(Government Exhibit #18 was admitted into evidence)

MR. PLATANIA: Can I have one minute, Judge?

(Government counsel conferred).

BY MR. PLATANIA: [10]

Q. So Lois, I'm about to hand you a series of envelopes. On the front, do you see anywhere that you've initialed and put a date?

A. Yes. I initialed it and dated it here.

Q. Who was with you when you initialed it and dated it?

A. You were and my attorney as well.

Q. We had a conversation about the contents of that packaging?

A. Yes.

Q. Can you hold it up for the jurors, please? There appears to be a small, blue baggy in there?

A. Yes.

Q. Do you know where that came from?

A. Yes; Steve McFadden.

Q. How do you know that that came from Steve McFadden?

A. Steve McFadden is the only person that ever sent me any bath salt in the Ziplock bags.

Q. I'm going to hand you Government's 6 and it's the same question for everything I hand you, if you can tell the jurors whether you initialed it and what's contained in it.

A. I have dated it and initialed it and it's another Ziplock bag with the bath salts in it and it came from [11] Steve McFadden.

Q. How do you know that?

A. The reason I know that is that he's the only one that ever sent me anything in Ziplock bags.

Q. Government 7.

A. Same thing. I have dated it and signed it. Again, Ziplock bag that came from Steve McFadden.

Q. Government 6 appears to have a letter on the back?

A. Yes.

Q. Can you tell the jurors what letter that looks like?

A. It's an N for "No Speed." The letter is in my handwriting because Steve told me the "No Speed" and "Speed" were the two different ones I was buying from him at the time. So we would put an N on the Ziplock bag so we would know which one was in it.

I did sign and date this one as well.

Q. Government 7, if you can see, there looks like there might be a letter in the upper left-hand corner. Are you able to see that?

A. Yes. This one here, I signed and dated as well and the letter that's up here is an S, which is for the "Speed."

Q. Whose handwriting is that? [12]

A. That is in my handwriting.

The Ziplock bag came from Steve McFadden.

Q. Who gave you the information that let you label those packages?

A. Steve McFadden gave me the information.

* * *

[17]

Q. Lois, for the record, I've handed you Government's 11. You can proceed.

A. I did initial this and this here is another package from Steve McFadden, the only person that ever sent me Ziplock bags.

Q. Government's 12.

A. I initialed this one as well. This is Ziplock bags from Steve McFadden, the only person that ever sent Ziplock bags. On this one, he has "not for human consumption" and that is in his handwriting and not mine.

Q. Lois, I have to ask a question. There appears to be a pink sticker at the bottom there.

A. Yes.

Q. Can you read that for the jurors and explain to them what that is?

A. Yes. This pink sticker says "The New Up," which [18] is a new bath salt.

Q. Where did that sticker come from?

A. That sticker came from Steve McFadden as well.

Q. Handing you Government's 13.

A. I signed and dated this on the front as well and this is another Ziplock bag from Steve McFadden. This one says "New Up, 4M, good." This came from Steve McFadden as well.

Q. Whose handwriting is that?

A. It's Steve McFadden's handwriting.

Q. Government's 14. Same questions about what's within the packaging.

A. I dated and signed this one as well. This here is Ziplock bag, which I always received with the

bath salts in it. These here are called little vials that Steve McFadden sent me as well. The handwriting on the top of the vials is my handwriting, but the vials came from Steve. So did the Ziplock bag.

Q. This is labeled Government's 15.01 and 15.02. I'd like you first to talk about the blue baggy and then there's something with a black top on it?

A. I dated and signed this one as well. Of course, the Ziplock bag that came from Steve McFadden. He would send me little baggies to separate it in and also the vials. I have "no" on some of these. It looks like all [19] of these are "no" and that's in my handwriting. That's what he would send me to sell the merchandise in.

Q. Who would give you the information that would allow you to label those?

A. Steve McFadden gave me the information in order to know what to label these with.

MR. DIAMOND: I'm sorry, Judge. I couldn't hear the last part.

BY MR. PLATANIA:

Q. Could you repeat the last part?

A. Sure. Steve McFadden would give me information for the N or the S or the Up. Anything, he always gave me information on it.

Q. Government 16. Again, it looks like, and if you could talk about each, one at a time, the blue baggies, the black-top containers and then a plain baggy.

A. Okay. I dated and signed this one as well. This is the baggy that I received from Steve McFadden with the bath salt in it. Here, this has Alpha written on it. This is the baggies that I received from Steve. I wrote Alpha on there myself. That's my handwriting. These are the vials that Steve would send me and I wrote on those as well, but the vials and the baggies came from Steve McFadden.

APPENDIX H

TESTIMONY OF RICHARD ISAACS
JAN. 8, 2013

[149]

Q. And then there appears to be in one of these envelopes kind of a beige crystalline powder of some sort.

A. Yes.

Q. Is that what led to the .48 grams being tested, the 121.01?

A. Yes. So, this 121.01 means that when I originally started the analysis, there was 0.48 grams of this beige crystalline powder.

APPENDIX I

TESTIMONY OF TOBY SYKES
JAN. 8, 2013

[174]

Q. If you could now please tell the jurors what you felt like compared to when you used meth to when you ingested those substances?

A. These substances right here was probably, to my experience, was ten times more potent than meth has ever been.

Q. What sort of things would you feel when you used them?

A. Extreme paranoia, sexual, depression, anxiety. It fluctuated because this drug never had the same – you know, every time you used the drug, you would have a different feeling.

Q. In what amounts would you use those in?

A. Anywhere between half gram to quarter gram shots.

Q. In what form were they in when you got them from [175] the video store?

A. All powder.

Q. How would you ingest or take the bath salts?

A. I would shoot them.

Q. What would you do to the powder to get it into a form to shoot it?

A. I would add water to it.

Q. Did you take it out and put it into something else?

A. Sometimes I would. Sometimes I would use like these little containers, envelopes. It depends on where I was at.

Q. You talked about the high lasting, I think, 12 to 15 hours for meth. How long would the high from the half to – quarter to half gram of that substance last?

A. Maybe a day, a good night.

APPENDIX J

TESTIMONY OF DANIEL MCFADDEN
JAN. 9, 2013

[65]

Q. I'm going to show you what's been admitted as Government's 40. There are just some plastic bags in here. Did you ever see any of those in your brother's possession?

A. Yes, things like it, yes. I'm not sure if it was exactly this stuff.

Q. You saw white powder substance in unmarked baggies?

A. Yes. Actually, sometimes they would be in like lump amounts.

Q. Like bigger amounts.

I'll show you Government's 16. Bigger amounts like that bag right there?

A. Yeah.

Q. You've seen them with these blue baggies or no?

A. No, I never saw any blue baggies of any kind, no.

Q. What about these small vials with black tops?

A. Those things, I did see, yes, small plastic containers.

Q. Did those have word on them like these words; Tranquility, Energizer, Stress Buster?

A. Something along those lines. I don't know exactly.

Q. What he flushed, you said, was a powder?

A. Yes.

APPENDIX K

TESTIMONY OF THOMAS DIBERARDINO JAN. 9, 2013

[2]

Q. Doctor, would you please introduce yourself to the jury?

A. My name is Tom DiBerardino. I'm a chemist with the Drug Enforcement Administration, stationed in headquarters.

* * *

[10]

Q. Does the DEA maintain a list of controlled substance analogues?

A. We do have a table for our own benefit to keep track of what we've analyzed, yes.

Q. So when you say for our own benefit, what you're suggesting, it's an internal document?

A. It's an internal document, yes.

Q. It is not published on the Internet on the DEA website.

A. No.

Q. Why is it only an internal document?

A. First, it just makes sense to keep a record of what we've done. That's obvious. But the important thing is that if we go public with this list, unfortunately, the list is not inclusive. We

can in no way maintain an all inclusive list of these analogues because they appear faster than we can write our names and we just don't have the manpower to devote ourselves full time to this issue. So we look at analogues as they come up, as investigations come up, as laboratories analyze these, as toxicology reports come in. We start noticing them. If trends continue, we take them more [11] and more seriously to the point where we do a full analysis, and I'm talking about a DEA-wide analysis. It's not just me. We do not publish that, again, because if we do, a person may go to that list and not see a particular substance and think that it is not an analogue because it's not on the list.

APPENDIX L

GOV'T EXH. 68A

8-25-11 2.txt

August 25, 2011 Phone call between Steve McFadden (SM) and Lois McDaniel (LM) boss

SM: Lois.

LM: Hey.

SM: Hey.

LM: Sorry I missed your call, but I was with a customer.

SM: Okay. Gotta talk fast, girlfriend, because my boss is around.

LM: Oh, okay. I thought you were the boss.

SM: Not here, not at this place. I am the boss at the other place, but I am not the boss where I work at my day job.

LM: Okay. I guess question is what is you best product at this time as far as your salts?

SM: That's the Sheen's

LM: Which one?

SM: The No Speed Limit.

LM: The No Speed Limit. Okay. Um, I know what that one is, and then you got a new one, Alpha?

SM: Right, the Alpha. But I gave you the straight chemical. That's straight Alpha. That is the replacement for the MDPV.

LM: Okay. What is next, what's the next best?

SM: Ah, the special blend I gave to you is probably the other stuff. That's the most powerful stuff out there, along with the No Speed Limit.

LM: Okay. What categories are they in?

SM: Ah, as far as anything really, the No Speed Limit is the fastest one. The one that I make for you is probably just a hair under that with just a little bit of a different type of bath, you know, and the Alpha is, well, the Alpha mixed with the 4-MEC gives you a No Speed Limit-like feeling, just not as intense.

LM: Okay. Which one of those would be like cocaine, though?

SM: Probably the Alpha with the MEC.

LM: Oh, okay. Well, see I didn't know that. What about the "S?"

SM: That would be the No Speed Limit.

LM: Okay, and that one's like the crystal meth?

SM: Well, I mean, people compare it to it, but, you know, I don't know nothing about that.

LM: Oh, okay. But you have the new up. What is the new up then?

SM: Well, that is the new up. That is the 4-MEC and the Alpha. That is the closest to the other thing you were saying.

LM: Oh, okay. All right. So, if this people ask me... okay, so the No Speed Limit is going to be like the cocaine then.

SM: No, like the S.

LM: And then the crystal meth one is which one?

SM: That is the crystal meth one, the No Speed Limit.

LM: Okay. All right. Well, I need you to send me some more? like you've been doing then. I gotta have it and I need it as soon as possible. Because I know that I'm not normally running out, but I am.

SM: Okay.

LM: Um, how much does it cost to ship to me overnight?

SM: Uh, normally like forty some odd dollars. I don't know why it's so damn expensive, but it is.

LM: All right. That's fine. But if I buy a thousand dollars, you wouldn't give me shipment free?

SM: Oh, hell, yeah, I would.

LM: All right. Well then, it sounds like we've got a deal then. And since you're in a hurry and your boss is there, and I don't want him to hear you talking to me, I can tell that might be a problem, um, what I'd like for you to do is ship to me overnight. But what I want you to do is I want

you to, I'm going to leave it up to you to figure out how much of which ones I get, okay? So, I get three different ones and I want you to give me so much of this one, so much of this one, so much of this one.

SM: Okay.

LM: And I'm gonna need those bags that you sent me, the little funny looking bags.

SM: Okay.

LM: I appreciate it. Um, if you got a handful of the bottles laying around...

SM: The what? Oh, yeah, the bottles. Sure. No problem.

LM: So, nothing else new then? That is what I was hoping to get from you. Nothing else new?

SM: Okay. No, nothing right now. But I'll have something new. I'll explain it to you when I get off work. I'll give you a call. Okay.

LM: All right. Well, send it to me now and I'll send you, I'll guess I'll talk to you Monday then?

SM: Ah, yeah. I'll talk to you. I'll give you a buzz after work anyway. All right?

LM: Okay.

SM: All right, girl.

LM: Now, um, you are gonna ship it to the same address as normal and it's going to be a thousand dollars, right?

SM: Yes.

LM: Because that is what I need to know so I can go ahead and get the money order this evening. I don't wanna, ah, so I'll have that tomorrow. That's the main thing.

SM: Yes.

LM: Okay. I appreciate it.

SM: Okay.

LM: Don't let me down.

SM: You got it.

LM: Thanks.

SM: All right, girl. I'll talk to you later.

LM: Bye.

SM: Bye.

End of call.

LM: Okay.

APPENDIX M

GOV'T EXH. 69A

10-26-11 3.txt

October 26, 2011. 3

(Phone ringing)

McDaniel: Hey.

McFadden: Hey. I can't take your calls sometimes because I'm either in meetings, I have, I have a regular job, you know.

McDaniel: That, that's okay. I just need to make an order. Can I make it right now?

McFadden: (inaud)

McDaniel: Can you get it out for me today?

McFadden: Listen to me carefully. I do not have, I have like almost nothing. I'm almost completely out myself. I'm waiting for my chemicals to come in. They should be here any day, but I may be able to get you enough to hold you over, but it's gonna be, um, actually one type of thing. It's 4-MEC. It's the, um, um, I, I call it the new

Sheens. It's the, ah, (inaud). And I'm getting good reviews on it. It's not bad, it's just different.

McDaniel: What, it's, it's something I've never had before?

McFadden: Ah, no. You've never had it before.

McDaniel: Okay. And, but you're saying it's good.

McFadden: You know, I, I'm selling it. I'm not having a problem getting rid of it or anybody liking it, ah, it's just, it's a little bit more, ah, ah, a little bit more energizing, and, and it's not as long lasting. You understand what I'm saying?

McDaniel: Yeah.

McFadden: But it, it's, ah, it's a harder hit to a shorter period of time.

McDaniel: Okay. What is it...

McFadden: Now...

McDaniel: ...what is it like, though? What kind of people like it?

McFadden: Ah, pretty much the ones who like (inaud)

McDaniel: Um, like the people that like the, um, synthetic cocaine or the synthetic meth?

McFadden: The meth. Yeah, more, more like the meth, ah, side.

McDaniel: Uh huh. Well, um, how much can I get for like three hundred dollars?

McFadden: Oh, ...

McDaniel: Two hundred? Do you have a two hundred package?

McFadden: (inaud) I mean, for COD it's not even worth it. But, um, ...

McDaniel: Well, ...

McFadden: (inaud) dollars I'll send it to ya.

McDaniel: All right, so I can get like two hundred dollars worth and, and you'll charge me forty for sending it overnight like normal.

McFadden: Yes.

McDaniel: Okay. That sounds good.

McFadden: All right.

McDaniel: All right. And I'm sorry that I keep worrying you to death, but these people worry me to death.

McFadden: No, I, listen, I, I hear you. Believe me, I, I'm breaking my China connection (inaud) because, ah, I, I'm like, I swear to God, I'm backed up like you wouldn't believe. I have a bazillion orders on my website. Ah, everybody and their mother is trying to buy it, and I, I have nothing to give 'em. I, I, I don't want to let go of the chemicals 'cause I have too many people buying, ah, you know, the aromatherapy.

McDaniel: Mmm.

McFadden: So, I, I, I'd rather keep that going, and then you know, everybody who's buying the straight chemicals, you know, they'll just have to wait 'til it comes in.

McDaniel: Okay. Well, can you get it out tonight though?

McFadden: Yeah. Ah, which address?

McDaniel: The [redacted].

McFadden: (inaud) do me a favor. Can you text that to me, please? Please text that to me.

McDaniel: I will. I will.

McFadden: Okay.

McDaniel: I'll do it within five minutes.

McFadden: Okay. Great.

McDaniel: Ah, can, can you get me some, can you get me some stuff in a week? Since you're low?

McFadden: Ah, oh you lost me.

McDaniel: Can, can I get some more stuff in a week?

McFadden: You should be able to.

McDaniel: Okay.

McFadden: Actually, I should, I should have a, ah, ah, a good, ah, a good amount of stuff by Wednesday of next week.

McDaniel: Wednesday? Perfect.

McFadden: (inaud)

McDaniel: Okay. So, that's perfect. We'll give you a call in a week or two then...

McFadden: Okay.

McDaniel: ...see what you got.

McFadden: You got it.

McDaniel: All right. Well, thank you.

McFadden: All right. Don't forget, text me the address.

McDaniel: I'll do it right now.

McFadden: All right. Yeah, 'cause I gotta do it by hand. I gotta fill out, ah, fill out the form by hand.

McDaniel: Okay.

McFadden: Okay?

McDaniel: Thank you.

McFadden: All right, Lois. You got it.

McDaniel: Bye.

McFadden: Bye bye.

(Beep)

McDaniel: All right. Now, I gotta te-

Orgon: That was a phone call from Steve McFadden to CI from phone number [redacted]. 5:40 p.m. October 26, 2011. SA Ed Orgon, Detective Mark Frazier.

End of Tape.

APPENDIX N

GOV'T EXH. 70A

Nov. 29, 2011 Phone Call between Steve McFadden (SM) and Lois McDaniel (LM).

SM: Hey, Lois. How are you?

LM: Hey, Steve. How are you?

SM: Pretty good. Can't complain.

LM: I need to make an order and I have a special request.

SM: What's that?

LM: My people are hoping I could get my hands on Speed and No Speed again.

SM: Uh, the closest thing I have is the Hardball, and actually uh, I added a little extra kick to it, so...

LM: Okay, let's go for it then if that's the only thing. Do you have anything better than that?

SM: Unless you are going to go for the straight chemicals, if ya know what I mean.

LM: Sure, yeah.

SM: Uh, ...

LM: I only have four hundred fifty dollars though, so you gotta treat me good today.

SM: How much?

LM: Four hundred and fifty. It's all I got today.

SM: One fifty?

LM: No, no. Four fifty.

SM: Oh, four fifty. I was gonna say, Lois, that doesn't sound like you. Are you sure I'm talking to the right person?

LM: All right. So, what can you send me for four fifty? Can you send me half and half?

SM: What? Half of the straight chemical and half of that?

LM: Yeah.

SM: Uh, yeah, I can do that. What I need to know from you, and see this is, are your people using it for aromatherapy or are they putting it directly on a burner?

LM: Oh, I don't know, I never asked.

SM: You know what I'm saying?

LM: I don't know. I don't know. Is there one that has to be used one way versus another?

SM: Oh, some people like to put it directly on a burner and then it smokes. You know, you smoke.

LM: Oh, well, I don't know.

SM: And some people like to use it just as an aromatherapy to, you know, to smell it.

LM: Oh, okay, they like the smell of it. Okay.

SM: You know what I mean?

LM: Okay.

SM: Right. So, it depends on usage which chemical I would send you.

LM: Oh, well, gee, well, give me one that will do both, or one that will do one or one that will do both or whatever.

SM: Well, actually, they all do both. Well, not all but some of them do one, some of them are just for aroma, and some of them are aroma and they smoke.

LM: Um, can you label it so I know what the difference is?

SM: Sure can. Not a problem.

LM: Okay, well, yeah, it's worth a try.

SM: Okay, you got it. I'll take care of it.

LM: I want it overnight, four hundred fifty dollars worth.

SM: You got it.

LM: Okay.

SM: All right, Lois.

LM: Thank you.

SM: You got t. I'll talk to you later.

LM: Bye.

SM: All right. Bye.

End of call.

APPENDIX O

GOV'T EXH. 71A

11-30-11.txt

November 30, 2011

Frazier: All right. Go ahead.

(Phone ringing)

McFadden: Hello, Lois.

McDaniel: Hey, Steve.

McFadden: What's going on, there?

McDaniel: I got your shipment, and...

McFadden: What's up?

McDaniel: Not, not much. I just wanted to ask you, what's the difference in the two?

McFadden: Ah, which ones did I send you again? I marked 'em. I'm sure I marked 'em.

McDaniel: Ah, PV1-2 and (inaud) or (inaud)

McFadden: (inaud)?

McDaniel: (inaud), yes.

McFadden: Okay. PV1-2, actually both of them you can burn, so it, it's good for both.

McDaniel: Okay.

McFadden: Both of them.

McDaniel: Well...

McFadden: Okay, the one, the one, the (inaud) is a little bit more, um, what do they call it, ah, trippy?

McDaniel: What?

McFadden: Trippy. Trippy. They call it, it's a little more trippy.

McDaniel: Okay.

McFadden: Ah, oh, ah, more, more of a euphoric I believe they use as a word.

McDaniel: Okay.

McFadden: All right? And that's, that's the straight up product, so, you know, you can, you know, actually cut that down, do whatever you want with it, because otherwise, it can be very slow last-, I gotta say, for some people it's not strong at all. For some people, it's, ah, it's just fine...

McDaniel: Okay.

McFadden: ...the way it is. You know, that's the, you know, you know, you know, the hardcore aromatherapy guys.

McDaniel: Okay. Now, um, so anybody that likes the old two, let me see, it was, um, Speed and those two? Are these...

McFadden: The, the, the No Speed, actually, the Hardball that I sent you? That Hardball is creeping close...

McDaniel: Okay.

McFadden: ...to the No Speed Limit.

McDaniel: Okay. Now, would either one of these be close to the Speed Limit or the other two?

McFadden: Ah, you know what? It is probably not as long, wouldn't last as long aroma, but it would be very intense. So, it would be very, very hard hitting at first, but ah, it would be, ah, you know, gone quickly. Maybe forty-five minutes, you know?

McDaniel: Oh, okay.

McFadden: (inaud) in, ah, Hardball gonna keep you going for a while.

McDaniel: Okay. Now, what about, um, the Up and the Alpha?

McFadden: Well, the, the Alpha is, is only good for guys who like the aroma. It's not good for burning it.

McDaniel: Okay. Okay.

McFadden: As far as I know, that's, that's the word I'm getting back. And, ah, it's, it's not, it's not super intense. It's more of a level-headed kind of thing. It, it's, it's a constant aroma.

McDaniel: Okay. Are either of the two an alternative for the, the meth?

McFadden: What's that?

McDaniel: Are either of these two like an alternative for the meth?

McFadden: An alternative for which?

McDaniel: For the meth? The crystal meth?

McFadden: Ah, I, I, I don't, we don't talk about that, you know that.

McDaniel: Okay. I'm sorry. I'm sorry. I just, you know yourself, I'm kind dumbfounded when it comes to this stuff.

McFadden: You know it's just, it, it, it's just, ah, the, the, the closest thing you have to that as an alternative is Hardball for, ah, you know, the guys who, who like a, a good strong aroma and, ah, and like it to last long.

McDaniel: Okay. Okay.

McFadden: All right? The other two, the other two, the other two are really for guys who know what they're doing.

McDaniel: Okay.

McFadden: You know, that, that's when you been doing it for a while. They'll, they'll know exactly what it is once you tell them what it is.

McDaniel: All right. Well, I'll tell you what. In about three weeks when I get some more money in my hands, I'll give you a call. Give...

McFadden: Okay.

McDaniel: ...you know, give or take a few, three weeks.

McFadden: Okay.

McDaniel: Okay?

McFadden: Not a problem, dear.

McDaniel: Thank you.

McFadden: You're very welcome.

McDaniel: All right. Bye.

McFadden: All right. Bye.

Frazier: It's off.

McDaniel: What in the world.

Frazier: It's, ah, 11-30-2011. Time is 16:26 by my watch. I'm here with, ah, Special Agent Ed Orgon and cooperating individual. A call was placed to [redacted]. Um, the CI spoke with Steven McFadden, ah, and discussed, ah, the bulk product that arrived on 11-30-2011 from Fed Ex. Um, end of post-amble.

End of Tape.

APPENDIX P

GOV'T EXH. 72A

1-5-12 N52.txt

January 5, 2012 (N52) Phone call between Steven McFadden (SM) and Lois McDaniel (LM)

Frazier: We got his, ah, ... there, there you go.

(Phone ringing)

SM: Hello, Lois.

LM: Hey, Steve.

SM: How are ya?

LM: I'm all right. I'm ready to make that order.

SM: Oh yeah? What do you need, girl?

LM: I need to spend five hundred dollars.

SM: Okay.

LM: And I need, I need to see if you got anything new.

SM: Oh gosh, the only thing that we have is reworked, we re-worked the, ah, the Hardball. This shit is kicking ass. We've got five active chemicals in it, so it really (inaud) you're gonna love it.

LM: Okay. So, um, Hardball. What else?

SM: Well, I still have the Sheens which is the, not the old one, you know, the new ones.

LM: Okay.

SM: Which is okay, I mean, they're okay, then the (inaud) better, because I got a much better second chemical for it, so...

LM: Okay. All right. All right. What else?

SM: Pretty much that's about it.

LM: All right. Sounds to me like I'm gonna trust you and get you to send me, um, a little bit of each. Send me more of the one you think might sell better.

SM: Okay. So, that would be the Hardball. Hardball's definitely gonna sell better.

LM: Hardball. Okay. And so, the, the Up, which customers gonna want Up?

SM: Actually, they'll all, ah, the, the guys who like ~~something steady and slow~~.

LM: Okay. All right.

SM: The Hardball is, is, is actually more hard core. So, you know?

LM: Well, sounds to me like I'm gonna trust you to send me five hundred dollars worth. You gonna give me shipping and handling free this time?

SM: Yeah, no problem. I'll throw that in for you.

LM: All right.

SM: How ya been? You been busy? Been doing anything? Been doing okay?

LM: Little bit, yeah. Been sick the whole winter. I been sick.

SM: Really?

LM: Yeah.

SM: That's, that's no fun.

LM: No, not really. I'm not used to being sick. Um, can you ship this overnight for me?

SM: Yeah, sure.

LM: 1141 Fifth Street, same as usual.

SM: (inaud)

LM: 1141, uh huh.

SM: Right, that, okay.

LM: All right? Steve...

SM: You got it.

LM: ...do me a favor. Send me some of the, um, baggies like you normally send

SM: Okay, that's not a problem. I actually, I'm pretty well stocked on 'em, so yeah, I'll, I'll send them, no problem.

LM: Okay. All righty. Well, sounds to me like we got a deal and if I don't receive my shipment tomorrow...

SM: Kill me.

LM: ...I'll kill ya. You'll be dead. All right. Thank you.

SM: I got you. No problem.

LM: All right. Bye.

SM: All right. Bye bye.

LM: So, new Up...

Frazier: Yeah.

LM: ...is steady and smooth.

Frazier: Ah, it's Detective Frazier. It's 1-5-2012. Time is 16:56 by my watch. Here with Special Agent Ed Orgon and ah, and a CI. CI placed a recorded phone call to Steve McFadden at [redacted] and ordered five hundred dollars worth of, um, bath salts, ah, three different kinds were requested. End of post-amble.

APPENDIX Q

GOV'T EXH. 73A

2-1-12.txt

February 1, 2012 Phone call between Steven McFadden (SM) and Lois McDaniel (LM)

(Phone ringing)

LM: That's great, Steve. How you doing?

SM: What's going on, Lois?

LM: Oh, you know me. I'd like to make an order.

SM: What do you need?

LM: Um, well, for starters do you have anything new and good?

SM: Ah, I'd say the only thing I did was I upped the Hardball a little bit again because, ah, I picked up some new (inaud), so ah, I, I, I added some more. So there's like five ingredients in there that are pretty kick ass. It works pretty well. Everybody seems to like it.

LM: Okay. Um, all right. So, I'll probably get a little Hardball from ya. Um, the Sheen seems to be doing pretty good.

SM: Could you hold on for just a second?

LM: Yeah.

(Phone ringing)

SM: (inaud)... Yeah... Yes... It's not available in quarts, only in gallons... Ah, sorry, I mean, well, I mean, how much are the kits?... Ah, hold on, I'll tell you in a sec.. Lois, let me call you back in two minutes.

LM: Two minutes. All right.

SM: Yup. All right. Bye.

End of call.

APPENDIX R

EXCERPT OF GOV'T EXH. 86

Re: Shipment From: mykaelsworld <[redacted][1]> To: Rightguy13 <[redacted]> Date: Mon, Jan 16, 2012 1:05 pm Your right maybe my next order I'LL see what they think of hardball. I think in my 1st order you sent that n winning. They were both good. Email your phone number please I didn't store it in my phone. Thanks Sent via my Samsung Galaxy Prevail from Boost Mobile [redacted] wrote: >Why don't you guys order 50 pcs at a time? 999.00 overnight shipping >included, or 100 pcs for 1700.00. > Also I sent you 2 jars of Hardball Aromatherapy to see if you can move >that too. > >Thank you> > >In a message dated 1/16/2012 10:42:36 A.M. Eastern Standard Time, >[redacted] writes: > >Ok so I'll receive it tomorrow? > >Sent via my Samsung Galaxy Prevail from Boost Mobile> >[redacted] wrote: > >>Sure thing. >> >> >>In a message dated 1/16/2012 9:44:48 A.M. Eastern Standard Time, >>[redacted] writes: >> >>Hi its Mauri from mykaelsworld ??Can you overnight my order? >> >>Sent via my Sam sung Galaxy Prevail from Boost Mobile>

* * *

[1] Email addresses redacted.

Re: Ioffer Seller Rightguy1327 – Dragon Bath Salts and More From: Rick Graham <[redacted]> To: Rightguy13 <[redacted]> Date: Mon, Jan 16, 2012 3:27 pm Can you give me an email address to use with paypal? On Mon, Jan 16, 2012 at 12:19 PM, Rick Graham <ricktgraham@gmail.com> wrote: Something is not working right (maybe me?!) I included a reference to your email and was proceeding to pay but don't think it worked as I didn't have to enter any c/c info. I'll keep poking around... it brings up the order with an option to re-order. On Mon, Jan 16, 2012 at 12:02 PM, <[redacted]> wrote: Rick, Nahhhh, you don't bug me... just was overwhelmed the last 2 weeks. Place the order on our site. www.herbalsolutions.mybigcommerce.com Its under the Green Valley Oils with the Hardball Aromatherapy... trying to put some shade on it. Thanks Steve In a message dated 1/16/2012 3:00:06 P.M. Eastern Standard Time, [redacted] writes: Sounds fair, I'll place the order online later. Thanks bud, I thought maybe you got sick of me bugging you! Cheers, Rick Sent from my iPhone, sorry for any typos... I'm driving. On Jan 16, 2012, at 11:03 AM, [redacted] wrote: Sorry I completely missed this message. How about 4 grams of Hardball for $100? Thanks In a message dated 1/9/2012 6:16:49 P.M. Eastern Standard Time, [redacted] writes: Sorry to keep bugging you! The hardball says 34 for 500mg and the dragon says 1g for 50 which makes it cheaper than hardball... unless I'm mis-reading it. I'm just the kind of guy who appreciates a deal! So, whats the best deal for a hundred? On Mon, Jan 9, 2012 at 11:13 AM, <[redacted]> wrote: look at green valley oils,

it's a front for the hardball In a message dated 1/9/2012 1:59:20 P.M. Eastern Standard Time, [redacted] writes: I only se bulk size orders for it...? On Mon, Jan 9, 2012 at 10:26 AM, <[redacted]> wrote: Hardball aromatherapy, it's on the site. Actually its stronger and comes in 500 mg containers. Really kind of works out to about the same price. I don't produce Dragon so I pay more for it. The ones I produce are much stronger than Dragon. I will be coming up with some new product very soon. Thanks In a message dated 1/9/2012 12:38:29 P.M. Eastern Standard Time, [redacted] writes: Will do, thanks. Is there a similar product I could get a deal on? Say 2.5-3 for a hun? On Mon, Jan 9, 2012 at 7:52 AM, <[redacted]> wrote: Rick, Not a problem. Can you post the order on our site? www.herbalsolutions.mybigcommerce.com Just don't want to forget it and be able to track it. Also put the payment information in the comments section on the order. Thanks Steve In a message dated 1/9/2012 10:30:49 A.M. Eastern Standard Time, [redacted] writes: $100 incl shipping for 2g? On Mon, Jan 9, 2012 at 7:24 AM, <[redacted]> wrote: Rick, How much are you looking for? It's pretty much readily available. Thanks Steve In a message date 1/8/2012 6:46:57 P.M. Eastern Standard Time, [redacted] writes: Hey Steve, any good deals on DRAGON? On Tue, Aug 2, 2011 at 9:59 AM, <[redacted]> wrote: Rick, I have opened my own site now with a longer list of products and since I won't be giving Ioffer a cut I can work better deals out. Check my site www.herbalsolutions.mybigcommerce.com After you join the site email me and I'll give you a $5 store credit. I'll be posting more items on the site over the

next few days. My best seller lately is Sheen's Winning Aromatherapy. Feel free to contact me if you need any more information. Thanks Steve